

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
TRANS-SPEC TRUCK SERVICE, INC.)	
D/B/A TRUCK SERVICE)	
)	
Plaintiff,)	
)	C.A. NO.: 04-11836RCL
v.)	
)	
CATERPILLAR, INC.)	
)	
Defendant.)	
_____)	

**AFFIDAVIT OF STEPHEN W. SCHOENING IN SUPPORT OF DEFENDANT
CATERPILLAR, INC.'S OPPOSITION TO PLAINTIFF'S AMENDED MOTION
FOR A PRELIMINARY INJUNCTION**

I, Stephen W. Schoening, of full age, being duly sworn on his oath, deposes and says:

1. My name is Stephen W. Schoening and I am currently employed by Caterpillar Inc. ("CAT") as its Regional Manager for sales services and parts in the Northeast. My position is specific to CAT engines and vehicles for on-highway use. I have served as CAT's Regional Manager in Hartford since April of 2003. I work with approximately twelve (12) dealerships in my region as well as Truck Engine Parts and Service dealers (TEPS). Prior to my current position, I was employed by CAT in Peoria, Illinois in a sales and marketing position for approximately two (2) years. Prior to Peoria, I was stationed in Mexico City, Mexico by CAT for three (3) years in a sales and marketing position. I have been employed by CAT for a total of eighteen (18) years.
2. I have substantial knowledge of CAT's C-12 diesel engines, which have a demonstrated history of excellent field performance in on-highway trucks.

3. I became aware of the alleged problems that Trans-Spec Truck Services (Trans-Spec) was experiencing with the C-12 engine's flywheel housing in its Sterling Truck fleet approximately one year ago.

4. Despite CAT's belief that the flywheel housing failures in the C-12 engines installed in Trans-Spec's Sterling Truck fleet was not a design or manufacturing defect attributable to CAT, CAT decided to continue performing repair and maintenance work on the C-12 engines in accordance with CAT's written express, limited warranties and extended service plan. CAT's decision to carry forth with such repairs was solely to enhance its good will.

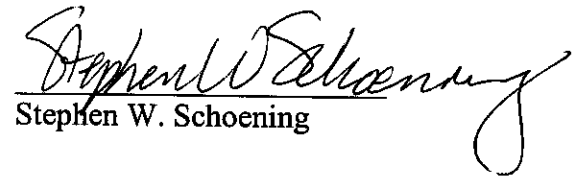
5. CAT has honored its warranty and extended service plan obligations to the Trans-Spec to date.

6. I have had an opportunity to review the Sterling Truck Specification Proposal attached to Trans-Spec's Amended Complaint as Exhibit A. Based on my many years in the on-highway truck and engine industry, I conclude that there is nothing unique about the specifications for Trans-Spec's trucks as assembled by Sterling Truck. They are clearly not "specially manufactured" to the extent that the term is intended to mean unique and non-replaceable.

7. Some or all of the 22 trucks in the Trans-Spec Sterling Truck fleet contain a so-called "wet kit" hydraulic component, which allows for operation of the truck dump body. However, this component is not necessary to haul tanker trailers, likes those used by Trans-Spec. Similar trucks can be leased or rented from various rental companies such as Penske Truck Rental, Ryder Systems, Inc. and AMI Leasing, These rental

companies would be able to provide Trans-Spec with trucks which would satisfy their needs to haul tanker trailers.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 9th DAY OF SEPTEMBER
2004


Stephen W. Schoening